IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 613 of 2005.

Reserved on: 30.4.2007.

Decided on: 17.05.2007.

H.R.T.C. & Others.

… … … Petitioners.

Versus

Rajinder Kumar .

… … … Respondent.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?[1] *Yes.*

For the petitioners: **Mr. H.S. Rawat, Advocate.**

For the Respondent: **None.**

Rajiv Sharma, Judge:

This petition is filed against the award passed by the Labour Court-cum-Industrial Tribunal, Dharamshala in reference No.284 of 2003 dated 23.4.2005.

The brief facts necessary for adjudication of this petition are that the appropriate Government has made the following reference to the Labour Court-cum-Industrial Tribunal, Dharamshala:-

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Whether reporters of local papers may be allowed to see the judgment?

"Whether the termination of services of Shri Rajinder Kumar S/O Shri Manohar Lal, Ex. Conductor by the Managing Director, H.R.T.C. Shimla, 2. The Divisional Manager, H.R.T.C., Dharamshala, Distt. Kangra, H.P., 3. The Regional Manager, H.R.T.C., Pathankot w.e.f. 18.2.1998 on the basis of enquiry report is proper and justified? If not, what relief of back wages, seniority, service benefits and amount of compensation the aggrieved workman is entitled to?"

The respondent (hereinafter for convenience will be referred to as workman) filed claim petition before the Labour Court vide Annexure P-2. The petitioner-Corporation had filed reply to which the workman had also filed rejoinder. The workman was appointed as conductor on daily wages basis on 31.5.1979 and was regularized on 1.3.1980. The workman was charge-sheeted on 18.7.1992 and after the submission of inquiry report; the workman was removed from service on 18.2.1998.

The thrust of the submission of workman before the Labour Court-cum-Industrial Tribunal was that his removal could not be ordered by the Regional Manager, H.R.T.C., Pathankot and the competent authority to pass the order of his removal was DM, H.R.T.C. on the basis of CCS(CCA) Rules, as well as Himachal Pradesh Transport Corporation Service Regulations, 1996, made applicable on 23.3.1996. Paras 3 and 4 of the claim petition are reproduced below:-

"That the removal of the petitioner was ordered on 18.2.1998 by the Respondent No.3 (RM HRTC Pathankot) whereas the Respondent No.2 (i.e. the DM, HRTC) was the competent authority to impose the penalty of removal i.e. a major penalty under Rule 11 (viii) read with Rule 5 and Annexure-A of the HRTC Service

Regulations 1996, as applicable from 23.3.1996 onwards.

That the removal of the petitioner on 18.2.98 by an incompetent authority in violation of the HRTC Service Regulations and Rule 11 of the CCS(CCA) Rules, is illegal and void abinitio."

The petitioner-Corporation has made the following averments in reply to paras 3 and 4: -

"Contents of this para are admitted to be correct. It is submitted that the termination has been made on the basis of enquiry report conducted by the enquiry officer. Moreover, the competent authority rejected the appeal of the petitioner after careful consideration and the order dt. 28.8.99 passed by the respdts. No.2 are legal and valid.

Contents of this Para are wrong, false, incorrect and hence denied. The services of the applicant/petitioner was removed by the competent authority vide order No. HRTC /PTK / Estt / PF-Vig-93/98-11536-11542 dated 28.2.1998 as per rule and regulations."

The workman besides taking the above noted plea has also stated in his claim petition that the charges were not proved against him in the inquiry report and the penalty of removal inflicted upon him was also dis-proportionate.

I have gone through the record carefully and heard the parties.

The Labour Court-cum-Industrial Tribunal has held on the basis of Schedule Ext. RW-2/A that the order of removal could be passed only by the Divisional Manager, H.R.T.C. and consequently the order passed by Regional Manager dated 18.2.1998 was invalid. The Corporation has placed on record the relevant extract of the Schedule with regard to powers of

appointments, discipline, appeals etc. vide Annexure P-4. The clause (G) of Annexure P-4 is relevant, which deals with Drivers/Conductors and Junior Technicians. As per column 3 under the head (nature of penalty) in relation to Rule 11 of the CCS(CCA) Rules, 1965, the major penalty could only be imposed by Deputy General Manager and the General Manager is the Appellate Authority. The petitioner in its reply has also filed evasive reply to paras 3 and 4 as reproduced above. The finding recorded by the Labour Court to the effect that the orders of removal has been passed by the authority not competent to do so is up-held.

The Labour Court has also stated in para 18 of the award that the petitioner-Corporation has taken no pains to contest the claim of the workman. Even the affidavit of Shri H.K. Gupta (D.M.), H.R.T.C., Dharamshala was brought on record as RW-1/A without attestation from the attesting authority. Mr. H.K. Gupta has not appeared for his cross-examination and his affidavit was brought on record on one Shri Tarsem Chand.

The Labour Court after discussing the evidence with regard to embezzlement has come to the conclusion that the workman has not committed the offence of embezzlement or mis-appropriation and he was held guilty of only attempting the same. The Labour Court has held further that the allegations of embezzlement and mis-appropriation appear to be doubtful.

The Labour Court after taking into consideration the previous record of the petitioner and as per Section 11-A of the

Industrial Disputes Act, 1947 has come to the just conclusion that the penalty of removal inflicted upon the workman was harsh and excessive. While coming to this conclusion that the penalty inflicted upon the workman was dis-proportionate, the Labour Court has considered the judgment of the Hon'ble Supreme Court in **Kailash Nath Gupta versus Enquiry Officer (R.K. Rai), Allahabad Bank and Others (2003) 9 SCC 480** as well as case between **Breach Candy Hospital and Research Centre and Babulal B. Pardeshi and Another 2002-IV-LLJ (Suppl.) Bombay 1011.**

The Presiding Judge of the Labour Court has also taken into consideration the Schedule Ext. RW-2/A and the fact that actual embezzlement or mis-appropriation was not proved while holding that the penalty imposed upon the workman was dis-proportionate.

The Hon'ble Supreme Court in **Calcutta Port Shramik Union v. The Calcutta River Transport Association and others AIR 1988 Supreme Court 2168** has held that the interference in the awards passed by the Industrial Tribunals by the High Courts should not be on hyper-technical grounds. Their Lordships have opined as under:-

> **"The object of enacting the Industrial Disputes Act 1947 and of making provision therein to refer disputes to tribunals for settlement is to bring about industrial peace. Whenever a reference is made by a Government to an industrial tribunal it has to be presumed ordinarily that there is a genuine industrial dispute between the parties which requires to be resolved by adjudication. In all such cases an attempt should be made by Courts exercising**

powers of judicial review to sustain as far as possible the awards made by industrial tribunals instead of picking holes here and there in the awards on trivial points and ultimately frustrating the entire adjudication process before the tribunals by striking down awards on hyper-technical grounds. Unfortunately the orders of the single Judge and of the Division Bench have resulted in such frustration and have made the award fruitless on an untenable basis."

It is settled proposition of law that the powers of this Court are very limited while examining the legality and validity of the award passed by the Labour Court. Hon'ble Supreme Court has also held in **Indian Overseas Bank versus I.O.B. Staff Canteen Workers' Union and Another (2000) 4 SCC 245** that exercising the powers under Articles 226 and 227 of the Constitution, the interference with pure findings of facts and re-appreciation of the evidence is held to be impermissible. It was also held that even insufficiency of evidence or if another view is possible is no ground to interfere with the findings of the Industrial Tribunal. Their Lordships have opined as under:-

"The learned Single Judge seems to have undertaken an exercise, impermissible for him in exercising writ jurisdiction, by liberally reappreciating the evidence and drawing conclusions of his own on pure questions of fact, unmindful, though aware fully, that he is not exercising any appellate jurisdiction over the awards passed by a tribunal, presided over by a judicial officer. The findings of fact recorded by a fact-finding authority duly constituted for the purpose and which ordinarily should be considered to have become final, cannot be

disturbed for the mere reason of having been based on materials or evidence not sufficient or credible in the opinion of the writ court to warrant those findings, at any rate, as long as they are based upon some material which are relevant for the purpose or even on the ground that there is yet another view which can reasonably and possibly be taken."

The Hon'ble Supreme Court has again considered this aspect in **Sugarbai M. Siddiq and Others versus Ramesh S. Hankare (dead) by LRs. (2001) 8 SCC 477** and has held that scope of powers of High Court is concerned not with the decision of the lower court/Tribunal, but with its decision making process. High Court must ascertain whether such Court or Tribunal had jurisdiction to deal with a particular matter and whether the order in question is vitiated by procedural irregularity, and then only High Court can interfere with otherwise not. Their Lordships have held as under:-

"There can be little doubt that in an application under Article 227 of the Constitution, the High Court has to see whether the lower Court/tribunal has jurisdiction to deal with the mater and if so, whether the impugned order is vitiated by procedural irregularity; in other words, the Court is concerned not with the decision but with the decision-making process. On this ground alone the order of the High Court is liable to be set aside."

In view of the above discussion and after considering the observations of the Hon'ble Supreme Court in the decisions referred above and looking into the findings recorded by the Labour Court on the basis of evidence led by the parties before it,

according to this court, the Labour Court has not committed any jurisdictional error or procedural irregularity while answering the award.

Consequently, the award of the Labour Court-cum-Industrial Tribunal, Dharamshala dated 23.4.2005 is up-held and this petition is dismissed with costs quantified at Rs.10,000/-.

(Rajiv Sharma)
Judge

May 17, 2007
(sck).